IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3663 OF 2006

Mrs.Rati Cyrus Havewala & anr. ..Petitioners.

Vs.

Minoo Shroff & Ors. ..Respondents.

...

Mr. B.B. Parekh for the Petitioners.

CORAM: DR. D.Y. CHANDRACHUD, J.

10th July, 2006.

P.C. :

The Appellate Bench of the Small Causes Court has in a carefully considered judgment furnished adequate reasons for rejecting the contention of the Petitioners in an application filed under Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The original tenant in the present case was Dinshaw Mody, who expired on 25th April, 1979. His wife Piroja died on 10th February, 1986. The Petitioners are the occupants of another flat, Flat 1 in Ness Baug and claimed to have resided with Piroja after 1984 as family. Parsi Law, it is admitted, does not recognize adoption. Neither of the Petitioners is related to Piroja. The Appellate Bench of the Court of Small Causes was

justified in holding that if at all, the appropriate remedy for the Petitioners was a regular declaratory suit. After the death of Dinshaw, his widow's brother and sister resided in the premises. The sister died. The brother's children who were alive were not impleaded as parties to the suit though they were necessary parties. In these circumstances, the remedy that was adopted by the Petitioners was thoroughly misconceived. No case for interference under Article 227 is made out. The Petition is dismissed.